

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1804

IN THE MATTER OF:

Served February 9, 1978

Application of VINCENT FERGUSON)
GIBSON T/A CONTINENTAL LIMOUSINE)
for Certificate of Public Con-)
venience and Necessity to Perform)
Special Operations -- Dulles)
International Airport)

Application No. 986

Docket No. 366

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Application of EXECUTIVE LIMOUSINE)
SERVICE, INC., for a Certificate)
of Public Convenience and Necessity)
to Perform Special Operations)

Application No. 994

Docket No. 371

WILLIAM R. STRATTON, CHAIRMAN, CONCURRING

If transportation were not regulated the service quality problems that gave rise to this case would have been resolved very quickly: Executive Limousine's services would have been dispensed with, and Continental Limousine, the carrier preferred by the riders, would have been substituted. Instead, the full panoply of an economic regulatory proceeding has been visited upon an unsuspecting group of passengers and the two small carriers vying for their business.

TWA's air crews, as a result of negotiations with their employer, are provided with transportation between planeside and a hotel when they lay over in Washington between flights. The crews from Los Angeles and San Francisco constitute a subgroup that generates about 30-35 thousand dollars per year in local ground transportation revenues. For some years their transportation was provided by Executive Limousine, Inc., under authority issued by this Commission.

This record amply demonstrates that Executive Limousine was providing substandard service to these air crews, a situation that went unrectified for long enough to cause them to express their discontent by taking their business to another carrier -- the classic response of discontented consumers. Continental Limousine, a "mom and pop" operation run by Vincent Ferguson Gibson and his wife, came forward to provide this service and did so in

what was apparently an exemplary fashion for more than a year, until, as a result of this proceeding, Continental was ruled off the road and the TWA crews were restored to a new, improved Executive Limousine as captive customers.

As a result, the air crews are probably now receiving from Executive service of a quality equivalent to Continental's. But significantly, this service is at a price 20 percent higher than Continental was charging. This 20 percent premium can only be attributed to the imposition of economic regulation upon this small element of the transportation industry.

Even the 20 percent in excess fares does not mirror all the costs in terms of time, anguish, and expense to the participants in this proceeding, or to the taxpayers of the jurisdictions who support this Commission in the discharge of its assigned responsibilities. These additional costs can't be quantified precisely, but some suggestion of the burden of the regulatory process can be gleaned from the timeline I have appended to this opinion.*/ This chart chronicles the events of record from start to finish of this case and in doing so reveals the convoluted nature of the regulatory process, which to resolve an issue that the marketplace could have disposed of overnight (and did) took us 16 months and required 30 filings of legal papers totaling 322 pages, 5 days of public hearings, that yielded 555 pages of transcript and caused the assessment of some \$1,309.00 in expenses against the parties, who also bore legal fees that I would not attempt to quantify lest the profession suffer embarrassment. In addition to the burden on the parties, the case required the expenditure -- I would estimate -- of something between 5 and 10 percent of the resources of the Commission over the life of this proceeding, suggesting that the taxpayers have about \$30,000 invested in this case, which required 12 formal orders from this Commission. All this is to say nothing of the effort and involvement of TWA employees who filed 22 petitions signed by 445 persons, wrote us 95 letters and made a half dozen informal visits to the Commission and an equal number of formal appearances as witnesses in these cases to demonstrate their virtually unanimous opinion that they would prefer Continental's services to those of Executive. One wonders if the travail of this proceeding was not equal to the major route case that brought the airlines themselves here.

The foregoing observations, I hasten to point out, come in a concurring opinion. There is no question that this case was correctly decided under the law and that it received thoughtful and careful consideration by an able staff and -- if I may say -- three very knowledgeable and fair regulators. But that said, surely this Jarndyce v. Jarndyce of transportation cases epitomizes the burdens of regulation upon the motor vehicle passenger transportation industry. It is an utter absurdity to spend almost a year and a half and probably more than \$50,000 from private pockets and the public fisc to decide a case that involves annual revenues of \$35,000 and an operating profit of \$3500, particularly if the final decision is clearly contrary to the desires of 90 percent of the customers, as this

*/ Another measure of the burden might be the case file itself: it weighs 20 pounds 4 ounces.

one was, and costs them substantially more than the alternative they had selected for themselves.

The Washington Metropolitan Area Transit Regulation Compact under which we function and whose strictures we uphold in accordance with our oath is, in my judgment, legislation whose life should have expired with the demise of franchised mass transit in the governance of a franchised mass transit operation, which must function with extensive cross-subsidization of routes and an investment that is large in the absolute, is utterly inapplicable to carriers without a general service obligation, who operate in the multitude of small and ever-changing submarkets of transportation.

As we all know the economic taxes of regulation come in small increments -- 50 cents per capita on a trip from the airport here, a small surcharge there, and so forth. As a result public discontent is shallow (though widespread) and the political momentum to turn the regulatory juggernaut from its path doesn't materialize. I believe this Commission itself should accept the initiative of reevaluating the public policy goals for the private passenger transportation industry in the Washington area, determining the extent to which these policies can be realized through the forces of the marketplace, and sponsoring a new regulatory framework that limits regulatory intervention to those cases in which marketplace forces are deficient in achieving the goals sought.

Appendix A

History of Dockets 366, 371 and 373

November 1, 1976	Gibson (Continental) commences operations	
November 1, 1976	Executive complains to WMATC	
November 18, 1976	Letter from WMATC to Gibson	
December 10, 1976	Letter from WMATC to Gibson	
January 11, 1977	Gibson files Application No. 986	(2 pages)
	Docket 366 opened	
January 11, 1977	Application rejected	
March 11, 1977	Gibson refiles Application	(12 pages)
March 15, 1977	WMATC Order No. 1660 issued:	(2 pages)
	a) sets hearing date (April 26, 1977)	
	b) prescribes notice requirements	
	c) invites protests	
	d) assesses \$350 for costs	
April 15, 1977	Executive (by counsel) files Protest	(3 pages)
April 18, 1977	Gibson amends Application	(2 pages)
April 26, 1977	WMATC Order No. 1667 issued:	(2 pages)
	a) hearing rescheduled (May 25, 1977)	
	b) new notice requirements prescribed	
	c) time to protest extended	
April 27, 1977	Executive (by Counsel) files Complaint against Gibson. Seeks consolidation of complaint with Gibson application. Docket No. 373 opened	(4 pages)
April 29, 1977	Executive (by counsel) files Application No. 994 and asks joint hearing with Gibson Application No. 986. Docket No. 371 opened.	(12 pages)

May 4, 1977	WMATC Order No. 1680 issued:	(2 pages)
	a) denies Executive's joint hearing request	
	b) sets hearing date on Application No. 994 (June 14, 1977)	
	c) prescribes notice requirements	
	d) invites protests	
	e) assesses \$350 for costs	
May 6, 1977	WMATC Order No. 1683 issued:	(2 pages)
	grants consolidation of Dockets 373 (Executive Complaint) and 366 (Gibson Application)	
May 12, 1977	Greyhound (by counsel) files protest to Executive's Application	(4 pages)
May 23, 1977	Gibson files financial data	(3 pages)
May 25, 1977	Gibson (by counsel) responds to Executive's Protest	(1 page)
May 25, 1977	Hearing on Gibson's Application and Executive's Complaint (Dockets 366, 373)	(125 pages)
June 1, 1977	2nd day of hearings on Application and Complaint	(242 pages)
June 8, 1977	Executive (by counsel) amends Application	(2 pages)
June 10, 1977	Gibson changes lawyers	
June 10, 1977	Gibson (by counsel) files Motion to intervene in Docket No. 371 (Executive's Application) and postpone hearing	(3 pages)
June 14, 1977	Hearing on Executive's Application No. 994 (Docket 371). Gibson's Motion to Intervene denied	(106 pages)
June 27, 1977	Gibson (by counsel) files Petition to Reopen and Consolidate Dockets 366, 371 and 373.	(67 pages)

July 5, 1977	Executive (by counsel) requests extension of time to answer petition	(3 pages)
July 20, 1977	WMATC Order No. 1725 issued: extension of time granted	(2 pages)
July 29, 1977	Executive (by counsel) files Reply to Gibson Petition to Consolidate	(10 pages)
August 5, 1977	WMATC Order No. 1734 issued: Temporary Operating Authority granted to Gibson	(4 pages)
November 1, 1977	WMATC Order No. 1765 issued: a) denies Gibson's Petition to Reopen and Consolidate b) denies Gibson's Application No. 986 c) directs Gibson to cease and desist all unauthorized carriage d) assesses costs of \$460 against Gibson e) grants Executive's application No. 994 subject to certain conditions	(13 pages)
November 4, 1977	Executive complies with conditions of Order No. 1765	
November 7, 1977	Certificate issued to Executive	
November 23, 1977	Executive (by counsel) files Petition to Remove Restrictions on Certificate	(9 pages)
November 28, 1977	Gibson (by counsel) files Motion for Extension of Temporary Authority	(27 pages)
November 30, 1977	Executive (by counsel) files Reply to Motion for Extension of Temporary Authority	(8 pages)
November 30, 1977	WMATC Order No. 1772 issued: Extends Gibson's temporary authority	(4 pages)
November 30, 1977	Gibson (by counsel) files Application for Reconsideration of Order No. 1765	(31 pages)

December 2, 1977	Executive (by counsel) files Application for Reconsideration of Order No. 1772	(10 pages)
December 2, 1977	Gibson stops operations	
December 5, 1977	Gibson (by counsel) files Reply to Executive's Application for Reconsideration of Order No. 1772	(19 pages)
December 5, 1977	WMATC Order No. 1776 issued: denies Executive's Application for Reconsideration of Order No. 1772	(2 pages)
December 6, 1977	Gibson resumes operations	
December 6, 1977	Executive (by counsel) files Reply to Gibson's Application for Reconsideration of Order No. 1765	(8 pages)
December 9, 1977	Gibson (by counsel) files Response to Executive's Reply to Gibson's Application for Reconsideration of Order No. 1765	(22 pages)
December 22, 1977	WMATC Order No. 1783 issued: a) denies Executive's petition to remove certificate restrictions b) grants partial reconsideration of Order No. 1765 as to both Gibson and Executive c) sets new hearing on January 13, 1978 d) assesses Executive and Gibson \$250 each	(3 pages)
January 3, 1978	Executive (by counsel) files Motion to Strike Gibson's Response to Executive's Reply	(2 pages)
January 10, 1978	Gibson files Motion for Clarification of Order No. 1783	(4 pages)
January 13, 1978	Hearing held on reconsideration	(16 pages)
January 16, 1978	2nd day of hearings on reconsideration	(66 pages)
January 17, 1978	Gibson (by counsel) files Petition to Review Evidentiary Ruling	(6 pages)

January 18, 1978	Staff files motion to Overrule Evidentiary Ruling	(2 pages)
January 23, 1978	Executive (by Counsel) files Reply to Petition for Review of Evidentiary Ruling	(5 pages)
February 1, 1978	Gibson (by Counsel) files brief in form of Proposed Order	(39 pages)
February 1, 1978	Executive (by Counsel) files proposed Order and supporting memorandum	(15 pages)
February 9, 1978	WMATC Order No. 1804 issued: a) denies Gibson application for reconsideration of Order No. 1765 b) imposes equipment requirements on Executive c) grants temporary authority to Executive	(6 pages)
February 10, 1978	Gibson stops operations, Executive starts	
February 22, 1978	Executive meets equipment requirements of Order 1804	
February 22, 1978	Gibson (by counsel) files Motion for Reconsideration of Order No. 1804	(9 pages)
February 27, 1978	Executive (by counsel) files Reply to Gibson's Motion for Reconsideration	(5 pages)
March 10, 1978	WMATC Order No. 1814 issued: a) reiterates denial of Gibson Application 986 b) issues certificate to Executive	(3 pages)